DOCUMENT RESUME

ED 227 561 EA 015 483

AUTHOR Shoop, Robert J.
TITLE Legal Negligence and the Community Educator.
PUB DATE Nov 82
NOTE 10p.
PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Community Education; Guidelines; Legal Problems; *Legal Responsibility; School Law; *Torts
IDENTIFIERS *Negligence

ABSTRACT

More and more educators are being charged with liability in court. Hence community educators need greater understanding of liability and need to know how to avoid being defendants in litigation. Ignorance of the law is no defense, even though it is often difficult to know what the law is. While there is a tension between protecting the rights of the individual and those of society, if the community educator fails to respect rights or to provide adequate care, then he or she has committed a tort. The most common tort is negligence, which relates to injury suffered because care has fallen below a certain standard. Negligence decisions take into account the circumstances, standard of care, risk, and participants' age and capability. Three standards are used to determine negligence, and another two standards--involving the defendant's guilt and the plaintiff's injury--are used to determine damages to be recovered for negligence. Ten guidelines for community educators to follow to avoid litigation involve sponsoring agency authorization, provision of adequate instruction, supervision by qualified personnel, use of a safe place, enforcement of rules, prohibition of dangerous activities, repair of equipment, first aid, and records of accidents and injuries. (RW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED227561

Legal Negligence and the Community Educator

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Robert J. Shoop

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Robert J. Shoop

Robert J. Shoop is the Director of the Kansas Center for Community Education and an Associate Professor of Education at Kansas State University

EA 015 483

November 1982

Legal Negligence and the Community Educator

"You are hereby notified that an action has been commenced against you in this court. You are required to file your answer to the petition with the court within twenty days after service of summons upon you. If you fail to do so, judgement by default will be taken against you for the amount of $275,000.00."

With each passing year more and more educators are being taken to court and charged with liability. The great majority of liability cases against the educator have to do with negligence, which is considered to be any conduct which falls below standard for the protection of others against unreasonable risk of harm. Because of the wide variety of activities that take place in a comprehensive program of community education, the possibility of negligent action is very great.

In theory, a community educator exercising adequate supervision would prevent all injuries to students under his or her care. However, the courts have ruled that educators cannot be expected to prevent all injuries. When such a large number and wide variety of people are brought together it is inevitable that accidents will happen or that one student may deliberately injure another.

The purpose of this article is to help the community educator to develop a greater awareness, understanding and appreciation of liability and to suggest some action that might be taken to prevent being a defendent in a litigation.

Because of the increasingly active role that the courts have played in public education, it is very important for all community educators to be

aware of what laws apply to the day-to-day operation of the schools, and how these laws apply to them. Many community educators have only a limited understanding of what their legal rights and responsibilities are. Community educators like other Americans are expected to know the law. The courts will not accept ignorance of the law as a defense. The courts uniformly adhere the concept of "ignorantia eorum quae quis sciee tenetur non excusat" which translates ignorance of those things which one is bound to know excuses not. The courts operate under the assumption that a professional educator is expected to know the laws that relate to his or her profession.

In reality, however, it is often difficult to know just what the law is. For law is more than the statutes passed by the legislature and signed by the governor or president. It is also more than the constitution and its amendents. What the law really says must be determined by the courts. Because of this, the law is not a static set of printed documents, but a living and changing set of precepts which depend on the courts for interpretation. The courts make their determination about specific cases by considering the statutory provisions and the particular set of circumstances of the specific case. Because of its flexibility in interpretation, laws change as the values and social mores of the community change. Social, political, economic, and environmental conditions and circumstances affect the determination of the law. In the final analysis the law is what the specific court says it is.

In our society there is a constant tension between protecting the rights of the individual and protecting the rights of the society as a whole. Laws have developed for the protection of the individual's rights and to enhance the welfare of the civilized community. These laws grant each individual certain personal rights, such as freedom from personal injury and security of life, liberty, and property. It has been said that "the only defensible

object or end of any law is the maximization of the happiness of the greatest number of the members of the community in question.[1] The laws that protect individual rights also impose corresponding duties and responsibilities on each individual to respect the rights of others. If a community educator fails to respect these rights, whether intentionally or by accident, thereby damaging another individual, he or she has committed a tort and may be held financially liable for his or her actions.

"A tort is a civil wrong not involving contract. The term is applied to a variety of situations where one suffers loss due to the improper (but noncriminal) conduct of another."[2] Courts will hold those who commit torts liable in damages to those injured

The community educator is not expected to guarantee that a child under his or her supervision will not be injured. Because they stand "in loco parentis" (in place of the parent) to the child, they are not expected to provide a greater degree of care than could be expected of the parents.

In determining what a person should or should not have done in a given situation the courts have traditionally asked "What would a reasonable man have done in a similar situation?" Various courts have described this hypothetical person as: a man of average prudence, a man of ordinary sense using ordinary care and skill.[3] However, with regard to educators, the generally accepted standard of care would be that of a reasonably prudent educator, not that of a reasonably prudent layman. It is agreed that the standard of care owed to a student by a teacher is expected to be greater because of the professional status.

The most common tort is negligence. Negligence is any action which falls below a certain standard which results in injury to another person. An

accident which could not have been prevented by a reasonably prudent person is not the result of negligence. However, many apparent accidents can be traced to the actions or inactions of another person. For example, if a community educator is supervising a group of students playing baseball and a student misjudges a fly ball and is hit in the face, under normal circumstances, that injury would not be grounds for the charge of negligence. However, if in a similar situation, a bat is cracked and the supervisor allows the child to play with it, and a student's hand is injured, that may be grounds for a negligence suit. Circumstances play a big part in determining an action negligent.

As the degree of risk increases, the standard of expected care also increases. For example the degree of care that would be expected of a community educator who was supervising classes in physical education, chemistry, shop or driver education would be higher than that of the community educator who was supervising a class in painting, speed reading or photography.

The age and capabilities of the participants are also factors in determining what level of care is expected. Similarily, the greater the infirmity or handicap the greater the degree of care that would be expected.

Where the community educator can show that the supervision was adequate he or she will generally not be held responsible.[4] The courts have ruled that "there is no requirement that the teacher have under constant and unremitting scrutiny the precise spots wherein every phase of play activity is pursued ... nor is there compulsion that the general supervision be continuous and direct, so long as it is otherwise adequate."[5] However, the educator is expected to protect the student from reasonably foreseeable risk. The courts do not expect the supervisor to have superhuman powers to foresee

a danger. But they do expect the teacher to protect the student from reasonably expected hazards.

The standards commonly used to determine whether an action is negligent are: 1) Did the defendent owe the injured party some duty?; 2) Did the defendent fail to perform this duty adequately?; 3) Did the injury result from this failure to perform this duty?[6] Negligence is a matter of fact and must be decided by the jury on instructions from the judge, who notes points of law. When a court determines that an educator is negligent it often awards damages to the injured party. The purpose of this type of award is to make the plantiff "whole again" and is aimed at compensating the person who has suffered a loss. Normally these damages are measured in terms of money. There are three types of damages that can be awarded. Compensatory damages that are awarded in an effort to compensate the injured party for his injury and nothing more. These damages generally cover medical expenses, court costs, attorney's fees, and loss of income. A second type of damage is referred to as exemplary damages. These are damages that are awarded for the purpose of punishing the defendent for his negligence. A third category of damages are nominal damages. This is usually a very small amount awarded where negligence has occurred but very little loss has been suffered.[7] The punishment for negligence is based on the assumption that "negligentia semper habet infortunium comitem" or negligence always has misfortune as a companion.[8]

To recover damages for negligence, a person must establish that (1) the defendent has been guilty of negligent conduct toward the plaintiff and (2) that the plaintiff has suffered an injury as a result of such conduct. Negligence without injury is not actionable.[9] The injured party has the burden of proving how and when the defendent was negligent, the so-called

"res ipsa" doctrine permits a plaintiff to establish a prima facie case of negligence simply by showing that: 1) the event which injured him would not have occurred in the absence of negligence, and 2) the defendent was in exclusive control of the instrumentalities causing harm. The latin words "res ipsa loquitur" translated mean "the thing speaks for itself" and where this doctrine is held to apply the defendent must defend himself against the prima facie case thus made or run the risk of having judgement rendered against him.[10]

It must be remembered that this discussion has focused on liability that has resulted from negligence not criminal action. In tort liability (where no criminal action is involved), the injured party must bring action against the defendent. If a criminal act is involved the state will bring criminal actions. However, in either type of action it is an established principle of common law that a school district is not liable for negligence or criminal acts committed by its employees.

Applying the basic assumptions from above, the following is a list of guidelines that will assist the community educator to avoid being a defendent in a liability suit.

1. Be sure that all activities are authorized by the sponsoring agency.
2. Be sure that adequate instruction is provided before any activity begins.
3. Be sure that supervision is conducted only by qualified personnel.
4. Be sure that all activities will be conducted in a safe place.
5. Be sure that the participants are aware of all rules and regulations and that these rules are enforced.
6. Be sure that participants are warned of the consequences of any dangerous acts.
7. Be sure that obviously dangerous activities are prohibited.
8. Be sure that all equipment is kept in good repair.

9. Be sure that first aid is administered appropriately and with due care.

10. Be sure to keep an accurate record of all accidents and injuries.

Perhaps the soundest approach to establishing a realistic supervisory relationship would be to begin with the concept that parents entrust schools with their children for the specific purpose of educating them in as efficient, fair, and reasonable a means as possible. Once the child is within the school, he or she is subject to the authority of the school and the school's employees for the sake of the accomplishment of a goal common to all students within the school system. Because of its entrustment, the school has the obligation to be fair and responsible in the exercise of its authority. It is the community educator's responsibility to ensure that the each student under his or her supervison will be safe from foreseeable harm.

NOTES

1. Chadman, Charles E. (Ed), Chadman's Cyclopedia of Law. American Correspondence School of Law, 1912. Citing Locke's Works II, p. 6.

2. Reutter, E. Edmund and Hamilton, Robert R. The Law of Public Education. The Foundation Press, 1976. p. 272.

3. Alexander, Kern; Corns, Ray and McCann, Walter, Public School Law. West Publishing Company, 1969. pp. 87-88.

4. Shoop, Robert J. The Teacher and The Community: A Case Study Approach. Collegiate Publishing Comppany, 1979. pp. 90-93.

5. Nolte, M. Chester. How to Survive Teaching: The Legal Dimension. Teach'em, Inc. 1978. p. 99.

6. Ibid. p. 97.

7. Ibid. p. 108.

8. Black Henry Campbell. Black's Law Dictionary, West Publishing Company, 1979. p. 933.

9. Lusk, Harold F. and Hewitt, Charles, M. Business Law: Principles and Cases. Richard D. Irwin, Inc. 1978. p. 68.

10. Ibid. p. 71.